

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA:

V.

Case No. 1:09CR284

RICHARD EARL JAENCH :

RE: Subpoena for Janet Jaench

MOTION TO QUASH SUBPOENA DUCES TECUM

JANET JAENCH, by and through counsel, hereby moves to quash the subpoena duces tecum issued to her through the undersigned counsel. The undersigned and counsel for the United States are available on Friday October 23, 2009 at 9:00 a.m. (Counsel understands that this case is already set on the docket on that day for other matters). The undersigned is not available on Thursday October 22, 2009 due to a previously scheduled matter in Stafford County on that day. Counsel is also available on Monday October 26, 2009 if the Court wishes.

On October 20, 2009, a subpoena was issued by the Clerk to Janet Jaench, the wife of the defendant, to provide handwriting exemplars in the presence of a government agent. Ms. Jaench has retained the undersigned to address this issue and counsel accepted service of such subpoena. We respectfully move to quash the subpoena on the following grounds.

First, Ms. Jaench asserts her spousal/marital privilege to the subpoena. See Trammel v. United States, 445 U.S. 40 (1980). The Court in Trammel made clear that the privilege belongs to the spouse to assert and Ms. Jaench does so here. The act of producing such handwriting exemplars could incriminate and potentially imprison her husband. We, therefore, respectfully

move to object on this basis. See also Federal Rule of Evidence 501. This objection cannot be cured by any position or act by the government.

Second, a rule 17(c) subpoena cannot be used to require handwriting exemplars. These subpoenas are directed to papers and documents. Handwriting exemplars are not authorized under the Rule and the government must assert authority to support this subpoena. The government has also sought to require attendance and the exemplars in its office and in the presence of a government agent. There appears to be no support for this request as well.

Finally, Ms. Jaench objects to the subpoena on the grounds that the act of compliance and production would violate her rights under the Fifth Amendment.

Janet Jaench
By Counsel

_____/_____
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Certificate

I hereby certify that the foregoing was filed electronically with the Office of the Clerk, on this 21st day of October, 2009 which will then send a copy to the Office of the United States Attorney, 2100 Jamieson Avenue, Alexandria, Virginia.

_____/_____
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